

# Frequently Asked Questions about EOs

## What is an Executive Order?

The Virginia Constitution and the Code of Virginia provide the Governor with wide latitude to determine the appropriate form of executive actions. Executive Orders and Executive Memoranda are two of the most prominent ways to influence the programs and policies of executive branch agencies and institutions.

- **Executive Orders** (EOs) are issued to accomplish a specific purpose and carry the full force and effect of law.
- **Executive memoranda** (EMs) are issued to communicate the Governor's policies and to provide guidance and direction to state agencies. They express the Governor's intent and desires, but have no force of law. By custom and practice over the years, they do not continue in effect beyond the term of the issuing Governor.

Executive Orders are the most frequently used formal documents intended to affect executive branch state agencies. The number of Executive Orders issued by Governors has gradually increased over the years. Starting with the Holton administration in 1970, the number of Executive Orders has been as follows:<sup>1</sup> Holton, 37; Godwin (second Administration), 63; Dalton, 55; Robb, 67; Baliles, 82; Wilder, 83; Allen, 79; Gilmore, 88; and Warner, 105.

Executive Memoranda have not been widely used by recent Governors.

Neither the *Constitution of Virginia* nor the *Code of Virginia* defines Executive Orders or specifically describes their use. Article V, Sections 1 and 7 of the *Constitution* and Section 2.2-103 of the *Code* authorize Executive Orders. The two constitutional sections define executive and administrative powers, and the *Code* section authorizes the Governor to formulate executive branch policy. Executive memoranda are not mentioned in the *Code* or the *Constitution*.

## When is an Executive Order issued?

Over the last several administrations, criteria for the issuance of an Executive Order have been developed and refined to reflect current Code requirements and practices. In general, Executive Orders are issued for the following purposes:

1. To delegate authority to appointed executive branch officials (Code Section 2.2-104)
2. To declare a state of emergency (Code Section 44-146.17)
3. To promulgate emergency plans, rules, and regulations (Code Section 44-146.17)

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<sup>1</sup> Not counting revisions to existing Orders, but counting the occasional erroneous use of the same EO number for two different Orders.

4. To establish gubernatorial commissions, such as task forces, study groups, and blue-ribbon panels, for no more than two years (Code Section 2.2-135). (Note: When a gubernatorial commission is established through Executive Order, the Order must state the type of commission, how it will be funded, and the staff hours required to support it.)
5. To assign temporary authority and to authorize essentially administrative actions by executive branch agencies and officials until the end of the current administration
6. To establish or clarify statewide policies where the matter is of serious statewide concern and the full force of law is appropriate
7. To permit a special action associated with an investigation to be taken by an agency
8. To continue or rescind previous Executive Orders

## What is the time frame of an Executive Order?

Nearly every Executive Order issued carries an expiration date, or “sunset.” Sunset dates illustrate the essentially temporary nature of Executive Orders pertaining to the executive branch.

- Executive Orders that direct specific actions generally should not extend much beyond the term of the issuing Governor. (It has been common in recent years to place the sunset date about six months after the issuing Governor’s term, to allow time for the new Governor to review the existing Orders.)
- Collegial bodies (such as gubernatorial commissions) created by Executive Order can exist for one year. They can be extended for an additional year through another Executive Order, but they can not exceed the term of the Governor.
- Orders that establish broad policy may be issued for longer periods but can always be rescinded and replaced.

## How are Executive Orders developed?

Executive Orders differ widely in terms of their urgency, complexity, and the scope of their implications. While some Executive Orders may be prepared and signed in a few hours, others take several months to develop appropriate policy. In general, the process of developing Executive Orders involves four functions:

- 1. Draft Executive Orders and Memoranda.** This is the process of developing policy and drafting the language of the proposed Order. It is the responsibility of the appropriate Secretary or agency to develop appropriate policy and then draft proposed language for the proposed Order. In recent years, the Department of Planning and Budget (DPB) has played a coordinating role and served as project manager.
- 2. Coordinate review and refinement of proposals.** This is basically a review and comment process. It is the responsibility of the agency preparing the Order to obtain review of the

Secretary and others in affected agencies. DPB may play a coordinating role and provide consultation, especially on issues with financial implications and cross-secretariat effects.

- 3. Distribute copies of Executive Orders to state agencies.** Following signature of the approved Executive Order by the Governor and the Secretary of the Commonwealth, DPB assures distribution of the proper copies to the State Registrar for publication in *The Virginia Register of Regulations* and to the Library of Virginia, for distribution to other libraries throughout the Commonwealth.

Two originals of each Executive Order contain the Governor's personal signature. After the Secretary of the Commonwealth attests to that signature and affixes the Lesser Seal of the Commonwealth, one original is filed in the Governor's Office and one is filed by the Secretary of the Commonwealth. All other versions are either unsigned electronic or hard copies or photocopies of the signed Order.

- 4. Maintain inventory of approved executive documents and those in effect.** This function involves maintaining a "perpetual inventory" of all approved executive documents and periodic reports on those in effect. DPB maintains this record. DPB's library also maintains notebooks of all Executive Orders issued. DPB coordinates review of expiring Executive Orders to determine if they should be continued or allowed to expire. The Office of the Secretary of the Commonwealth and the Library of Virginia also maintain archival records of Executive Orders.

## What elements are included in an Executive Order?

Executive Orders include the following elements:

- 1. Number of Executive Order** The format is "Executive Order XX (year)," as in "Executive Order Number 89 (2005)." The preparing agency should simply insert "xx" in place of the number. The order number is in bold, all caps, and underlined. The Governor's Office will assign the number when the order is ready for the Governor's signature. The year needs to be indicated on the first page in the title block, so that users do not need to page to the end of the Order to figure out which one it is. (Orders from different gubernatorial administrations can have the same number.)
- 2. Short title** A short title explaining the nature of the order. The title is centered, in all caps, and bold.
- 3. Opening statement** The opening statement should include a specific reference to the Governor's authority to issue the order.
- 4. Background explanation** An explanation of the circumstances requiring the order and the purpose of the order.

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| <b>5. Reference to other executive orders</b> | If applicable, include a statement rescinding or amending any related Executive Order (s) still in effect.  |
| <b>6. Effective and sunset dates</b>          | A statement of the effective date of the order and the date when the order will expire.                     |
| <b>7. Signature lines</b>                     | A line for the signature of the Governor and a line for the signature of the Secretary of the Commonwealth. |

## **How are Executive Orders numbered?**

Executive Orders begin with “1” at the start of each Governor’s term and are numbered sequentially throughout the four-year term. (Orders do not begin renumbering with 1 with each calendar year.) Executive Orders of Governor Warner, for example, began with Executive Order 1 (2002). The next Governor’s first Order will be numbered “Executive Order 1 (2006).” In internal documents, Executive Orders are often referenced in an abbreviated way, for example, “EO 1(06).”

## **How are Executive Orders made available to the public?**

The Governor’s Office posts all new Executive Order on his website at <http://www.governor.virginia.gov/> . Those EOs issued by former governors that are still in effect are listed on the Department of Planning and Budget website at <http://dpb.virginia.gov/>

Each new Executive Order is also published in the Virginia Register, the state’s official source of regulatory information. The Register is published in hard copy and is also available on-line at <http://legis.state.va.us/codecomm/register/issfiles.htm> .

Copies of Executive Orders are provided to the Library of Virginia which distributes them to twenty libraries around the Commonwealth.

At the end of a year, all Executive Orders issued during the year are included in The Report of the Secretary of the Commonwealth, often called “The Blue Book.”

Signed originals are filed in the Governor’s Office and the Office of the Secretary of the Commonwealth. Both offices are located in the Patrick Henry Office Building on Capitol Square in Richmond.

At the end of a Governor’s administration, the originals of the EOs issued by that Governor are turned over to the Library of Virginia’s archives for permanent storage.